Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1254

LIBERTY LOAN CORPORATION,
PETITIONER,

v.

COMMONWEALTH OF MASSACHUSETTS,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

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INDEX

	Page
Opinion of the Court Below	1
Jurisdiction	2
Questions Presented	2
Constitutional Provisions Involved	3
Statement of the Case	3
Federal Question Was Properly Raised	5
Reasons for Granting the Writ	7
Conclusion	12

Table of Citations

Cases

Barbier v. *Connolly*, 113 U.S. 27 (1885)	8
Caldwell v. *Texas*, 137 U.S. 692 (1891)	9
C. I. T. Corporation v. *United States*, 150 F.2d 85 (9th Cir. 1945)	10, 11
Commonwealth v. *Abbott Engr., Inc.*, 351 Mass. 568, 222 N.E. 2d 862 (1967)	7
Commonwealth v. *Anthony*, 306 Mass. 470, 28 N.E. 2d 542 (1940)	7
Commonwealth v. *Briant*, 142 Mass. 463, 8 N.E. 338 (1886)	7
Commonwealth v. *Hayes*, 145 Mass. 289, 14 N.E. 151 (1887)	7
Commonwealth v. *Nichols*, 51 Mass. (10 Metc.) 259 (1845)	7
Commonwealth v. *Putnam*, 70 Mass. (4 Gray) 16 (1855)	7
Commonwealth v. *Rooks*, 150 Mass. 59, 22 N.E. 436 (1889)	7

Page

Commonwealth v. *Stevens*, 153 Mass. 421, 26 N.E. 992 (1891) 7

Commonwealth v. *Stevenson*, 142 Mass. 466, 8 N.E. 341 (1886) 7

Commonwealth v. *Uhrig*, 138 Mass. 492 (1885) 7

Commonwealth v. *Wachendorf*, 141 Mass. 270, 4 N.E. 817 (1886) 7

Continental Baking Co. v. *United States*, 281 F.2d 137 (6th Cir. 1960) 10

Egan v. *United States*, 137 F.2d 369 (8th Cir. 1943) 10, 11

Fowler v. *Rhode Island*, 345 U.S. 67 (1952) 9

Griffin v. *Illinois*, 351 U.S. 12 (1955) 8

Grosjean v. *American Express Co.*, 297 U.S. 233 (1936) 8

Kentucky Finance Corp. v. *Paramount Auto Exchange Corp.*, 262 U.S. 544 (1923) 8

Liggett Co. v. *Lee*, 288 U.S. 517 (1933) 8

Lynumn v. *Illinois*, 372 U.S. 523 (1963) 6

Magnolia Motor & Logging Co. v. *United States*, 264 F.2d 950 (9th Cir. 1959) 10

Mallinckrodt Works v. *St. Louis*, 238 U.S. 41 (1915) 8

Mininsohn v. *United States*, 101 F.2d 477 (3rd Cir. 1939) 10

Morisette v. *United States*, 342 U.S. 246 (1951) 11

New York Central & Hudson R. R. Co. v. *United States*, 212 U.S. 481 (1909) 10, 11

Niemotko v. *Maryland*, 340 U.S. 268 (1951) 9

Old Monastery Co. v. *United States*, 147 F.2d 905 (4th Cir. 1945) 10

People v. *Canadian Fur Trappers Corp.*, 248 N.Y. 159 (1928) 10

People v. *Dunbar Contracting Co.*, 151 N.Y.S. 164 App. Div. 59 (1914) 10

People v. *Hudson Valley Construction Co.*, 217 N.Y. 172, 111 N.E. 472 (1916) 10
Power Mfg. Co. v. *Saunders*, 274 U.S. 490 (1927) 8
Railway Express Agency, Inc. v. *New York*, 336 U.S. 106 (1949) 8
Santa Clara County v. *Southern Pacific R. R. Co.*, 118 U.S. 394 (1886) 8
Standard Oil Co. v. *Tennessee*, 217 U.S. 413 (1910) 8
State v. *Grazioni*, 60 N.J. Super. 1, 158 A.2d 375 (1959), *aff'd.*, 31 N.J. 538, *cert. denied*, 363 U.S. 830 (1960) 10
United Factory Outlet, Inc. v. *Jay's Stores, Inc.*, Mass. Adv. Sh. (1972) 159, 278 N.E. 2d 716 (1972) 6
United States v. *Carter*, 311 F.2d 934 (6th Cir. 1963) 10
United States v. *Knox Coal Co.*, 347 F.2d 33 (3rd Cir. 1965) 10
United States v. *Steiner Plastics Mfg. Co.*, 231 F.2d 199 (2nd Cir. 1949) 10
Watkins v. *United States*, 354 U.S. 178 (1957) 8
Wheeling Steel Corp. v. *Glander*, 337 U.S. 5 (1949) 8
Yick Wo v. *Hopkins*, 118 U.S. 356 (1886) 9

Constitutional and Statutory Provisions

Fourteenth Amendment to the Constitution of the United States 2, 3, 7, 8
28 U.S.C. § 1257 (3) 2

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The Petitioner, Liberty Loan Corporation, respectfully prays that a writ of certiorari issue to review the opinion and judgment of the Supreme Judicial Court for the Commonwealth of Massachusetts, entered on November 4, 1971.

Opinion of the Court Below

The opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts is reported in 1971 Massachusetts Advance Sheets 1367-1547, 275 N.E. 2d 33, and is printed and separately presented herewith on pages A-

1-A-203 of the Joint Appendix of this Petitioner and Lyle S. Woodcock.

Jurisdiction

The judgment of the court below was entered on November 4, 1971, and is printed on page B-1 of the separately bound Joint Appendix of this Petitioner and Lyle S. Woodcock. A petition for rehearing was denied on November 23, 1971, and both the petition and the order of the court below are printed in Appendices F and G of the separately bound Joint Appendix of this Petitioner and Lyle S. Woodcock. On January 24, 1972, Mr. Justice Brennan granted an extension of time until April 2, 1972, within which Petitioner could file this petition. (Appendix H of Joint Appendix) The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3), since Petitioner specially set up or claimed certain rights, privileges or immunities under the Constitution of the United States.

Questions Presented[1]

1. Was it a violation of the Equal Protection Clause of the Fourteenth Amendment to convict the corporate Petitioner as a principal in *mala in se* crimes without the proof of intent required to convict a human principal in the same circumstances?

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[1] Petitioner adopts and incorporates herein all the questions presented and the reasons for granting the writ based on those issues as they appear in the separate Petition For Certiorari filed herewith by its employee, Lyle S. Woodcock. As is demonstrated in that Petition, this Petitioner also properly raised those questions below and fully protected its rights regarding them.

To avoid burdening the Court with unnecessary duplication, Petitioner also adopts and incorporates herein the questions presented in the Petitions For Certiorari filed herein by Beneficial Finance Co. and Household Finance Company which argue that Petitioners were denied equal protection of the laws and due process of law because of the manner in which the indictments were procured from the grand

Constitutional Provisions Involved

Section 1 of the Fourteenth Amendment to the Constitution of the United States:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

On December 18, 1966, this Petitioner was convicted in the Massachusetts Superior Court along with two other, so-called, small loans companies and seven individuals of conspiracy and bribery of two Massachusetts regulatory officials concerning a rate board hearing in 1962. The trial had begun July 18, 1966. A second trial involving the same defendants and others in the small loans industry in which they were also charged with ostensibly separate conspiracy and bribery began on July 17, 1967, and ended on June 10, 1968. Half way through that second trial this Petitioner received a directed verdict of not guilty. The

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jury. Petitioner duly raised these issues in a pre-trial motion to dismiss and other pleadings and exceptions, preserved them on appeal in its assignments of error 1-6, specifically preserved them by adopting, on page 4 of its pre-trial brief in the court below the arguments pertaining thereto by the other defendants, and the Massachusetts Supreme Judicial Court specifically recognized that this Petitioner had duly preserved and presented the questions and expressly rejected these federal constitutional claims. See pages A-5-A-22 of Joint Appendix filed herewith.

two cases were consolidated on appeal, and on November 4, 1971, the Massachusetts Supreme Judicial Court affirmed all of the convictions.

Liberty Loan Corporation is a large publicly held national finance company and had fourteen offices in Massachusetts in 1962. Lyle S. Woodcock, one of Liberty's nine vice presidents and eleven directors was also convicted in the first 1966 trial. The only evidence against Liberty concerned the actions of Woodcock. Other than his title as a vice president and director, the only evidence of his authority or connection with Petitioner's business in Massachusetts was that he had attended some hearings on changes in small loan regulations two years before the alleged bribery conspiracy and had responded to two routine letters, one, in September, 1961, concerning some corrections in annual license renewals, and the other in November, 1962, reporting that Petitioner's treasurer would attend the rate board hearings which were allegedly the subject of the conspiracy. Substantial other evidence was introduced which proved that other officers of the Petitioner in fact had more to do with its Massachusetts business than did Woodcock.

A single sentence supposedly spoken by Woodcock at a meeting of some small loans company employees in New York on October 17, 1962, was the only evidence connecting him or any of Petitioner's employees in any way with the alleged crimes. The meeting had been called to discuss the preparation of some phases of the industry's case to be presented at the forthcoming rate board hearings in Massachusetts and the possible formation of an industry trade association in Massachusetts. Among those at the meeting was one Heath, who was an employee of one of Petitioner's competitors. He was the state's only witness who testified concerning the conspiracy itself. Heath testified that after the business of the meeting was concluded

the idea of bribing the rate board was brought up and discussed by several people from other companies. After Heath said the "program" could be handled for $25,000, Heath testified that Woodcock then said "in substance": "At the $25,000 figure perhaps we have no choice, but I want it clearly understood that the figure is $25,000 and *not one penny more*, and no one is to come back at a later date and request that the figure be raised, under any conditions." Heath went on to describe further comments by those in attendance, but attributed nothing further to Woodcock. In several previous appearances before the grand jury and the Massachusetts Crime Commission Heath had testified about the meeting, but at trial was the first time he ever ascribed any statement to Woodcock.

There was extensive testimony from Heath of many meetings and conversations before and after the New York meeting which dealt with the alleged conspiracy, but neither Woodcock nor any other Liberty employee was present or even mentioned. The only time this Petitioner or any of its employees was mentioned in connection with the crime in almost six months of testimony, was Heath's uncorroborated assertion that Woodcock said one sentence at the New York meeting.

Federal Question Was Properly Raised

Petitioner in its argument in support of its motion for a directed verdict urged on the trial court that the motion must be allowed because there was no evidence of any corporate participation by Liberty Loan Corporation in the alleged crimes, and that it could not, therefore, be held as a principal as matter of law. (I Tr. 6197-6226). In its Decision And Order denying the various motions for directed verdicts the trial court ruled, relative to the question of corporate criminal liability: ". . .[T]here is no difference

between a case where an individual acts through an agent or intermediary and a case where a corporation does so." (Appendix "A," p. X, I Tr. Vol. 94). This Petitioner argued to the Massachusetts Supreme Judicial Court in its main brief (pages 29-47) that the trial court said one thing but did another. The Commonwealth's brief (pages 109-110, 112) then proposed for the first time "treatment of corporations in a manner different from individuals." Petitioner's reply brief (pages 8-9) argued that this concept "would work a denial of equal protection of the laws . . . another unnecessary constitutional error." The Supreme Judicial Court's opinion, while not specifically alluding to the constitutional context, ruled in several places that a different standard of criminal responsibility applied to a corporate principal than applied to an individual principal. (Mass. Adv. Sh. [1971] 1367, 1430, 1433, 1438, 1445 [pages A-71, A-74, A-81, A-89 of Joint Appendix]).

Recognizing that a certificate would remove any question that a ". . . decision of the federal claim . . . was necessary to the judgment rendered . . . ," *Lynumn* v. *Illinois*, 372 U.S. 523, 536 (1963), Petitioner requested such a certificate by letter dated January 24, 1972, (a copy of which is printed at Appendix I of the Joint Appendix), but the certificate was denied without comment by the court in a letter dated the next day (a copy of which is printed at Appendix J of the Joint Appendix). References to the opinion in the instant case in a very recent opinion of the Supreme Judicial Court concerning a corporation's liability for civil contempt place beyond argument, however, that the court did intentionally make the distinction between corporations and individuals objected to by petitioner. *See, United Factory Outlet, Inc.* v. *Jay's Stores, Inc.*, Mass. Adv. Sh. (1972) 159, 278 N.E. 2d 716 (1972). If that works an unconstitutional denial of equal protec-

tion of the laws, as Petitioner herein contends, the question was, therefore, properly raised below.

Reasons for Granting the Writ

As the court below recognized, the consistent rule of law in Massachusetts for the imposition of criminal liability on an individual master because of the acts of his agent required proof that the master in some way participate in, countenance, or approve the act of his servant, whether the crime was a common law crime requiring intent or a regulatory crime.[2] In this case of first impression, however, the Massachusetts Supreme Judicial Court held that a *corporate* principal was criminally liable for the common law crimes of bribery and conspiracy under the rule of respondeat superior as it is applied in civil cases, without any evidence of intent or corporate participation in the crime. Evidence arguably warranting a guilty finding for bribery and conspiracy against one of Petitioner's vice presidents, whose authority was not proven, was here held to be sufficient to hold the corporation criminally liable. This Petitioner submits that such an unprecedented rule of corporate criminal responsibility is a denial of its Fourteenth Amendment right to equal protection of the laws.

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[2] *Commonwealth* v. *Anthony*, 306 Mass. 470, 28 N.E. 2d 542 (1940); *Commonwealth* v. *Stevens*, 153 Mass. 421, 26 N.E. 992 (1891); *Commonwealth* v. *Rooks*, 150 Mass. 59, 22 N.E. 436 (1889); *Commonwealth* v. *Hayes*, 145 Mass. 289, 14 N.E. 151 (1887); *Commonwealth* v. *Stevenson*, 142 Mass. 466, 8 N.E. 341 (1886); *Commonwealth* v. *Briant*, 142 Mass. 463, 8 N.E. 338 (1886); *Commonwealth* v. *Wachendorf*, 141 Mass. 270, 4 N.E. 817 (1886); *Commonwealth* v. *Uhrig*, 138 Mass. 492 (1885); *Commonwealth* v. *Putnam*, 70 Mass. (4 Gray) 16 (1855); *Commonwealth* v. *Nichols*, 51 Mass. (10 Metc.) 259 (1845); *See*, *Commonwealth* v. *Abbott Engr., Inc.*, 351 Mass. 568, 580 222 N.E. 2d 862, 870 (1967).

A corporation is, of course, a "person" constitutionally entitled to invoke the equal protection clause of the Fourteenth Amendment,[3] and while state law may make reasonable distinctions between individuals and corporations,[4] if such distinctions are found to be arbitrary, unpertinent or insubstantial, a corporation has a constitutional right to avoid any such unequal treatment.[5] While this Court has never ruled on the question in the context of *corporate* criminal responsibility, it has always been particularly sensitive to insist on equal protection of the laws in the field of criminal justice:

> "... In fulfillment of their obligation under this statute, the courts must accord to the defendants every right which is guaranteed to defendants in all other criminal cases." *Watkins* v. *United States*, 354 U.S. 178, 208 (1957).
>
> "... [I]n the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses." *Barbier* v. *Connolly*, 113 U.S. 27, 31 (1885).

It makes no difference whether the denial of equal protection is on the face of a particular law or results from the

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[3] *Wheeling Steel Corp.* v. *Glander*, 337 U.S. 5 (1949); *Railway Express Agency, Inc.* v. *New York*, 336 U.S. 106 (1949); *Grosjean* v. *American Express Co.*, 297 U.S. 233 (1936); *Liggett Co.* v. *Lee*, 288 U.S. 517 (1933); *Kentucky Finance Corp.* v. *Paramount Auto Exchange Corp.*, 262 U.S. 544 (1923); *See, Santa Clara County* v. *Southern Pacific R. R. Co.*, 118 U.S. 394, 396 (1886) and cases cited.

[4] *See, Mallinckrodt Works* v. *St. Louis*, 238 U.S. 41, 55-56 (1915); *Standard Oil Co.* v. *Tennessee*, 217 U.S. 413, 420-421 (1910).

[5] *Power Mfg. Co.* v. *Saunders*, 274 U.S. 490 (1927); *Kentucky Finance Corp.* v. *Paramount Auto Exchange Corp.*, 262 U.S. 544 (1923).

application or implementation of the law by the state.[6]

Quite simply, on the evidence here this Petitioner would not have been convicted under Massachusetts law if it were an individual, there being no evidence of its participation in the crimes, and to attach criminal responsibility on a corporation for a common law crime on a markedly lesser quantum of proof than would be necessary for a human "person" is patently arbitrary, and, therefore, a denial of equal protection of the laws which should be struck down before this ruling of a usually respected court becomes a serious mischief in other jurisdictions.

Any suggestion that corporateness itself is a sufficient difference as a practical matter to require a different rule than is applied to individual principals is belied by a survey of the cases.[7] Courts have had no difficulty in determining when there was sufficient corporate participation and applying the usual master-servant rule to find corporations liable for common law crimes. While what the courts have *said* is sometimes confusing, an analysis of the different fact situations shows recurring corporate actions which have been held to be sufficient participation in the crime to find the necessary intent.

Perhaps the easiest group of cases are those in which the corporate participation is total because the actor-agent *was*

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[6] *Griffin* v. *Illinois*, 351 U.S. 12 (1955); *Fowler* v. *Rhode Island*, 345 U.S. 67 (1952); *Niemotko* v. *Maryland*, 340 U.S. 268 (1951); *Caldwell* v. *Texas*, 137 U.S. 692 (1891); *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886).

[7] The large body of cases involving regulatory crimes, where intent is not an element, are not relevant to this issue, of course, and utilizing the civil rules for there attaching corporate liability is perfectly proper. Some of the confusion in this area of the law of corporate criminal responsibility has been spawned by courts failing to distinguish between crimes *mala in se* and those only *mala prohibitum*. A body of case law has grown up where courts have attached corporate liability for common law crimes on the basis of authorities involving only regulatory crimes, without noticing, or at least mentioning, that intent was not an element.

the corporation; his control such that his decisions were the corporation's.[8] Many of the cases contain several of these elements of corporate participation, of course. Other important indicators of corporate participation alluded to in the cases are the use of corporate funds in the crime,[9] specific ratification or assent,[10] the fact that the crime entailed a repeated pattern of conduct over a period of time,[11] or specifically proven authority of the agent in the matter or area in which the crime was committed.[12] In the instant case there was no evidence of any of these elements which might be utilized to hold this Petitioner liable.

A second classic reason for granting the writ is that the ruling of the court below is not in accord with decisions of this Court. Its' opinion relies heavily on the case of *New York Central & Hudson R. R. Co.* v. *United States*, 212 U.S. 481 (1909). Even though the lower court recog-

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[8] *United States* v. *Carter*, 311 F. 2d 934 (6th Cir. 1963); *Magnolia Motor & Logging Co.* v. *United States*, 264 F. 2d 950 (9th Cir. 1959); *Old Monastery Co.* v. *United States*, 147 F. 2d 905 (4th Cir. 1945); *Egan* v. *United States*, 137 F. 2d 369 (8th Cir. 1943); *Mininsohn* v. *United States*, 101 F. 2d 477 (3rd Cir. 1939); *State* v. *Grazioni*, 60 N.J. Super 1, 158 A. 2d 375 (1959), *aff'd.*, 31 N.J. 538, *cert. denied*, 363 U.S. 830 (1960); *People* v. *Canadian Fur Trappers Corp.*, 248 N.Y. 159 (1928); *People* v. *Dunbar Contracting Co.*, 151 N.Y.S. 164, 165 App. Div. 59 (1914).

[9] *United States* v. *Knox Coal Co.*, 347 F. 2d 33 (3rd Cir. 1965); *United States* v. *Carter*, *supra*; *Old Monastery Co.* v. *United States*, *supra*; *Egan* v. *United States*, *supra*.

[10] *Continental Baking Co.* v. *United States*, 281 F. 2d 137 (6th Cir. 1960); *United States* v. *Knox Coal Co.*, *supra*.

[11] *United States* v. *Knox Coal Co.*, *supra*; *Continental Baking Co.* v. *United States*, *supra*; *Old Monastery Co.* v. *United States*, *supra*; *Egan* v. *United States*, *supra*; *State* v. *Grazioni*, *supra*; *People* v. *Hudson Valley Construction Co.*, 217 N.Y. 172, 111 N.E. 472 (1916).

[12] *United States* v. *Knox Coal Co.*, *supra*; *United States* v. *Carter*, *supra*; *Magnolia Motor & Logging Co.* v. *United States*, *supra*; *United States* v. *Steiner Plastics Mfg. Co.*, 231 F. 2d 199 (2nd Cir. 1949); *C.I.T. Corporation* v. *United States*, 150 F. 2d 85 (9th Cir. 1945); *Old Monastery Co.* v. *United States*, *supra*; *Egan* v. *United States*, *supra*; *People* v. *Dunbar Contracting Co.*, *supra*.

nized that the *New York Central* case concerned itself with a statute which specifically dispensed with the necessity of proving corporate intent, it ruled (App. 121a):

> "... In this regard the [*New York Central*] case illustrates the public policy rationale for imposing vicarious liability upon a corporation and thus warranting the treatment of corporations in a manner different from that of individuals for the acts of their agents."

The court also drew sustenance from the fact that "lower Federal court cases which dealt with crimes requiring specific intent ... cited and applied the rule of the *New York Central* case." (App. 121a). Two examples, cited by the court below, are *C.I.T. Corporation* v. *United States, supra,* and *Egan* v. *United States, supra.* Petitioner contends that these lower Federal courts have, clearly, *mis*applied the *New York Central* case. This Court has not dealt with the question of corporate criminal responsibility in the sixty-three years since the *New York Central* opinion. This case, also entailing an unconstitutional denial of equal protection of the laws, is an attractive vehicle for the Court to provide the dispositive guidance so obviously needed in this important area of the law at a time when "white collar crime" is burgeoning.

Finally, by effectively ruling that no proof of *mens rea* is necessary for corporate liability for common law crimes, the lower court's decision completely ignores this Court's stricture in *Morisette* v. *United States,* 342 U.S. 246, 263 (1951):

> "The Government asks us by a feat of construction radically to change the weights and balances in the scales of justice. The purpose and obvious effect of doing away with the requirement of a guilty intent is

to ease the prosecution's path to conviction, to strip the defendant of such benefit as he derived at common law from innocence of evil purpose, and to circumscribe the freedom heretofore allowed juries. Such a manifest impairment of the immunities of the individual should not be extended to common-law crimes on judicial initiative."

Conclusion

For the reasons set forth above a writ of certiorari should issue to the Supreme Judicial Court of Massachusetts.

Respectfully submitted,

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